IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII Rule 32(2) (b)

Description of the Case.

Criminal Misc. Appl. No. 339 of 2006

Date of Decision : 22.06.2006

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date:- 22.06.2006 Initial of Judge

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.339 of 2006.

Anil Kumar Ruhela
son of Sri Om PrakashRuhela
resident of New Arya Nagar,
near Chandi Mandir, Pilkhuwa,
district Ghaziabad, U.P.
Presently C/o Bhgwan Das Ruhela,
Mohalla Shivpuri Mugara Meerganj
Bareilly, U.P. ....Applicant

Versus

1. Judge, Family court
   District U.S.Nagar
2. Smt. Seeta Ruhela
   D/o Late Shri Rajaram Ruhela
   W/o Sri Anil Kumar Ruhela
   Resident of Mohalla Katoramal
   Kurmanchal Colony
   Tufal Ka Bagh,
   P.S. Kashipur
   District U.S.Nagar ..... Opp.parties.

Sri Deepak Sharma, Learned counsel for the applicant.
Learned A.G.A. & Sri Lokpal Singh for Opp.party no.1 & Smt. Pushpa Joshi for Opp.party No.2.

Dated: 22.06.2006

Hon'ble J.C.S. Rawat, J.

1. Heard learned counsel for the parties and perused the record.

2. The petition under section 482 Cr.P.C. has been filed against the orders dated 1.3.2006 and 5.4.2006 passed by the Judge Family Court, U.S.Nagar in case No.207/2003 Smt. Sita Ruhela Vs. Anil Kumar.

3. Brief facts of the case are that the respondent no.2-Smt. Seeta Ruhela moved an application under section 125 Cr.P.C. against her husband(applicant) before the Family Court. When the applicant did not

appear before the court below on 26.10.2005, the Family judge passed an order to proceed exparte against the present applicant vide order dated 26.10.2005. Feeling aggrieved by this, on 01.03.2006 the applicant moved an application before the court below with the prayer to hear him in the said case. The trial court on the same day i.e. 03.01.2006 has passed an order that the applicant can only argue the case, but he was not allowed to adduce evidence before the trial court. Thereafter, on 29.03.2006 the applicant moved an application for seeking exemption of his personal appearance. The said application was rejected by the court below vide order dated 05.04.2006.

4. Feeling aggrieved by both the orders passed by the court below, the present petition has been filed.

5. A perusal of Section 126(2) Proviso provides that the opposite party may move to the court to set aside the exparte order or any such order passed against the O.P. in the proceeding. If the court was of the view that the ground was sufficient the applicant should have allowed to participate in the proceeding and he should have set aside the exparte order. It would be just and proper to give a fair opportunity to both the parties to be heard and to adduce the evidence. The Trial Court held that he can argue the case as such his explanation for the above was sufficient. The learned trial court should have set aside the exparte order dated 3.1.2006 and opposite party would have been allowed to proceed and participate in the case.

6. In view of the above, the impugned order by which the applicant was not allowed to adduce the evidence, is erroneous. Therefore, the impugned orders are liable to

be set aside applicant- O.P. can adduce the evidence in the court below.

7. It would be just and proper to direct the trial court to dispose of the case within a period of three months after the production of the certified copy of the order. However, it is also made clear that the applicant will appear on each and every date before the trial court. If he does not appear before the trial court the trial court shall proceed exparte against him. The applicant shall also give an undertaking before the court below that he will appear before the court on each and every date and he will adduce evidence within a period of three months. If the applicant does not give the undertaking before the court below, the opportunity of hearing and adducing the evidence to the applicant shall stand withdrawn. Even if the applicant does not appear before court below after submitting the undertaking, the opportunity of hearing and adducing the evidence to the applicant shall stand withdrawn.

8. The petition is disposed of accordingly.

(J. C. S. Rawat, J.)

22.06.2006
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